

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 21, 2011

In the Matter of S. W. LUNSFORD, JR., Minor.

No. 300362

Clinton Circuit Court

Family Division

LC No. 10-021909-NA

In the Matter of S. W. LUNSFORD, JR., Minor.

No. 300411

Clinton Circuit Court

Family Division

LC No. 10-021909-NA

Before: METER, P.J., and SAAD and WILDER, JJ.

PER CURIAM.

In these consolidated appeals, respondent father appeals an order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(g), and (j). Respondent mother appeals the same order that terminated her parental rights to the child pursuant to MCL 712A.19b(3)(g), (i), (j), and (l). For the reasons set forth below, we affirm.

The child was removed immediately after his birth based on respondent mother's three prior terminations and respondents' lack of income and housing. It appeared as though respondents were going to plan together for the child, so services were offered to each. Respondents pleaded to the allegations in the petition in exchange for the agency's agreement not to immediately seek termination of their parental rights. However, by the initial dispositional hearing, the trial court authorized the Department of Human Services (DHS) to file a termination petition based on respondents' lack of participation in services.

Respondent father's sole argument on appeal is that there were procedural defects that precluded the trial court from entering its termination order, specifically (1) lack of reasonable efforts to reunite the family and (2) lack of notice that the April 29, 2010, disposition hearing, which was held 29 days after adjudication, would be treated as a permanency planning hearing. To the extent the father claims his due process rights were violated for failure to receive notice of the permanency planning hearing, the matter is not preserved and therefore reviewed for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Generally, when a child is removed from his parent's custody, the agency is required to make reasonable efforts to rectify the conditions that caused the removal. MCL 712A.18f; MCL 712A.19a(2); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). At the beginning of the case, it appeared as though respondents planned to stay together and work on reuniting with the child, in spite of the mother's three prior terminations. While DHS initially sought to terminate respondent mother's parental rights, the agency was amenable to providing a concurrent treatment plan in which one option was for reunification, while the other option was for adoption. DHS put services into place for both respondents. Respondent father's primary issues were lack of suitable housing and consistent income, an extensive criminal history, and a history of substance abuse. He was offered a substance abuse evaluation and drug screens, as well as a psychological evaluation. Respondent father was also offered three hours of weekly visitation.

Respondent father completed a substance abuse evaluation, but he was not forthright in disclosing the nature and extent of his prior substance abuse. The evaluator initially noted, "based solely on his presentation today, there is no substance abuse treatment warranted." However, one week later, the evaluator provided an addendum to his report after he discovered that the father went to an emergency facility for what respondent mother described as an attempted drug overdose on her prescription medications. Respondent father reported that he took the pills to relax. Concerned by these developments, the evaluator offered counseling, but respondent father failed to attend his scheduled session. Respondent father's self-reporting was also at odds with an evaluation that was prepared a year earlier in relation to a support/custody case involving his two older children. In that interview, respondent father admitted to excessive drinking. Respondent father also tested positive for alcohol once during this case and failed to appear for two other drug tests. He did nothing to acknowledge that he had a problem and took no steps to remedy it. Respondent father also refused to undergo a psychological evaluation. He made appointments twice for the evaluations and failed to attend both times.

At the permanency planning hearing, the caseworker, Joel Brown, requested that petitioner file a petition to terminate parental rights because he did not believe more services should be offered. Brown testified that respondents were made aware of this at a permanency planning conference. Brown further testified respondent father was under criminal investigation for slashing the tires on a car owned by respondent mother's new boyfriend. He had also been arrested for failure to appear in court on a ticket for driving on a suspended license and he lied about it when speaking with Brown. The father told Brown that his truck had been towed because it was not drivable when, in reality, it had been impounded. Therefore, though only 29 days had passed since the adjudication, it was obvious that the father had made poor progress. Respondent father lacked housing or employment, had engaged in criminal behavior, failed twice to attend a psychological evaluation, was dishonest during his substance abuse evaluation, tested positive for alcohol, failed to appear for at least two other substance screens, turned down an offer of counseling, and lied about his relationship with respondent mother, which was extremely volatile and included outbursts during a visit in which DHS employees had to intervene.

Citing MCL 712A.19(7), respondent father argues that the trial court was without authorization to change what was originally scheduled as a dispositional hearing into a permanency planning hearing. However, as we previously noted, there was a concurrent plan in place under MCL 712A.19(12), which provides that "[r]easonable efforts to finalize an alternate

permanency plan may be made concurrently with reasonable efforts to reunify the child with the family.” The father was aware of this plan at the planning meeting with DHS, which occurred before the permanency planning hearing. Respondent father also cites MCL 712A.19a(4), which provides that “[n]ot less than 14 days before a permanency planning hearing, written notice of the hearing and a statement of the purposes of the hearing, including a notice that the hearing may result in further proceedings to terminate parental rights, shall be served upon” the parents. However, respondent father appeared at every hearing and was adequately represented by counsel. There is simply no support for his argument that he was prejudiced by lack of notice that the hearing would be treated as a permanency planning hearing.

There was also clear and convincing evidence to support termination of respondent father’s parental rights. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). At the time of the termination hearing, he did not have a consistent source of income. From January 2010 until September 2010, respondent father worked a total of eight weeks as a handy man. He also lacked suitable housing, moved from place to place during the case, and resided with his mother in a trailer at the time of the termination hearing. Though his mother indicated that she would like to have the child placed with her, she admitted that she never expressed this to anyone. Respondent father had unaddressed substance abuse issues and unaddressed mental health issues. Even though counseling services were offered, respondent father failed to follow through. He also never completed a psychological evaluation and missed two scheduled appointments. It was clear that the father was not in a position to provide the child with proper care or custody and would not be able to do so within a reasonable amount of time. The father’s mental instability, unaddressed substance abuse issues, and continued criminality also placed the child at risk of harm. Termination was also in the child’s best interests. The child was removed from respondents’ care when he was just a newborn. The father missed numerous visits. It could not be said that an appreciable bond existed between them.

In her appeal, respondent mother argues that the trial court erred when it terminated her parental rights without first affording her reasonable reunification services. However, such efforts were not required in this case because of the mother’s prior terminations. MCL 712A.19a(2)(c). Respondent mother admitted that she gave birth to her first child when she was only 15 years old. Attempts at reunification failed, and her parental rights to her first child were involuntarily terminated. At age 17 respondent mother developed a cocaine habit. She subsequently gave birth to two more children, one of whom tested positive for cocaine at birth. Those children were immediately removed from the mother’s care. Once again numerous services were offered, but the mother continued to test positive for cocaine and failed to participate in a substance abuse program. She readily admitted that she failed to comply with services and that she voluntarily relinquished her parental rights to the two children because she knew she was not in a position to care for them.

Respondent mother was in no better position to care for this child when he was born. Both respondents were living with her uncle, whose parental rights to his own child had been terminated. Recognizing that her prior terminations may cause the child’s removal, respondent mother hastily agreed to allow respondent father to have full custody of the child and she agreed not to have any contact. Respondent father moved out of the uncle’s home and moved into the home of respondent mother’s ex-boyfriend, who was the father of one of respondent mother’s

older children. While indicating a desire to allow respondent father to have custody of this child in order to prevent his placement in foster care, respondent mother also appeared to want to stay with the father to work toward unification. Thus, the trial court ordered DHS to provide both respondents with services at the preliminary hearing.

Respondent mother was offered a psychological evaluation, a substance abuse evaluation, random drug testing, and weekly visitation. She was advised to seek employment and appropriate housing. She completed her psychological evaluation after missing her first two scheduled appointments. The evaluator did not rule out the possibility that she might adequately parent some day, but she would need months of intensive intervention and services to do so. Respondent mother had continuing mental health issues, she was diagnosed as bipolar, and she suffered from depression, but refused to take her medication because she did not feel she needed it.

Respondent mother also submitted to a substance abuse evaluation in which the evaluator concluded that no additional substance abuse services were needed; however, his conclusion was based on respondent mother's self-reporting that she was actively involved in a 12-step program. Respondent mother failed to provide documentation of her involvement in such a program despite the worker's repeated requests. The documents she provided at the termination hearing did not show her attendance at meetings until the end of July 2010. In addition, respondent mother tested positive for alcohol twice and missed numerous screens. Thus, in spite of respondent mother's assertion that she had not used cocaine since April 2009, any alleged recovery from her substance abuse problems was not established in the record.

In addition to respondent mother's unaddressed mental health and substance abuse issues, she lacked income or employment. Incredibly, when asked whether she had employment, respondent mother answered, "What is DHS for?" She made feeble attempts to obtain her GED and her housing situation remained troubling. She had lived in at least seven different places since the beginning of the case, including with her cousin, her uncle, respondent father, two different boyfriends, in a truck, in a hotel, and with other relatives. At the time of the termination hearing, respondent mother shared a one-bedroom apartment with her boyfriend. In no way can this be construed as stable housing in light of the mother's numerous unstable and unhealthy relationships over the years.

Also during the pendency of the case, respondent mother engaged in new criminal activity. She explained that she drove her friend home without a valid license because the friend was drunk. Respondent mother's prior terminations, unaddressed substance abuse and mental health issues, lack of housing, lack of employment, general instability and criminality all provided clear and convincing evidence to terminate her parental rights.

Termination of respondent mother's parental rights was also in the child's best interests. The child was removed from respondents' care as a newborn. Respondent mother visited with some consistency, but there was no evidence that an appreciable bond existed. Respondent mother was unable to care for herself, much less a six-month-old child. The trial court did not err when it terminated her rights.

Affirmed.

/s/ Patrick M. Meter

/s/ Henry William Saad

/s/ Kurtis T. Wilder